TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~345~~ 1444.

JOHN H. HAUGHTON AND LAWRENCE J. HAUGHTON, APPELLANTS,

vs.

ANNA E. SMALLWOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA.

FILED DECEMBER 7, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 345.

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1 UNITED STATES OF AMERICA,
District of North Carolina.

Circuit court of the United States, fourth circuit.

Be it remembered that, on the fourth day of April, A. D. 1870, John H. Haughton and Lawrence J. Haughton, by their solicitor, M. E. Manly, filed their bill of complaint in the office of the clerk of the circuit court for said district against Anna E. Smallwood, guardian of Charles Allen, in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
North Carolina District,
Circuit Court, 5th Circuit.

JOHN H. HAUGHTON & LAWRENCE J. HAUGHTON, citizens of North Carolina,
against
ANNIE E. SMALLWOOD, GUARDIAN OF CHAS. ALLEN, a citizen of New York.

To the Hon'l. Geo. W. Brooks, judge of said court:

Humbly complaining unto your hon., your orators, John H. Haughton & Lawrence J. Haughton, both of the State of North Carolina, show that they, (with Peter G. Evans, now deceased,) made their note to the defendant, as guardian of Charles Allen, on the 16th of December, 1860, for five thousand two hundred & seventy-five dollars, payable one day after date.

That, in January, 1868, your orator, John H. Haughton made a proposition to the defendant, by letter addressed to her at Antonia, in the State of New York, to pay off said note by installments, the two first payments to be for $500 each, and the third to pay up all the interest then due, and requested the defendant to extend the time of payment in that way so as to obtain indulgence and to prevent a suit on said note; to this letter your said orator received a reply in a letter of the defendant, dated 15th January, in which she says: "The arrangement you propose I accede to, as I do not like to be unreasonable at
3 such a time as this," further adding that if this agreement was punctually carried out on the part of your orator, John H., she would not find it necessary to call on your orator for the principal, that is for a long time to come, as it is supposed was her meaning, though the expression was as just stated, without further qualification.

Your orator, John H. Haughton, further complaining, shows that in the letter of January the defendant stated the payments which she understood your orator to propose and to which she acceded, were as follows, to wit: $500 now, or in one or two months; $500 more in twelve months; and (oftener at next or 3d payment,) pay all the accumulated interest, that only the principal would be due; and then pay semi-annually the accruing interest, she would not call for the principal of the debt.

Your orator further shows that in the month of April, 1868, he wrote the defendant that he was ready to pay her the 1st installment of five hundred dollars, according to his agreement, and desired to know to whom he sho'ld make the payment. To his great surprise your orator, John H., received a reply stating that she, the defendant, declined to receive the said sum, because he had not fulfilled his promise as to

time, and that had he done so, she probably would have taken
4 no further action; but so far from adhering to the former agreement, the defendant, in the last letter just refer'ed to, made an entirely new and different proposition, to wit: "that your orator should pay $500 then; $1,000 in November, about six months; and give a mortgage for the balance of the debt, in a manner entirely satisfactor*ily* to my (her) lawyer, I will let the debt remain, to be settled in the payments you (John H. Haughton) propose; and if this was not done, the defendant threatened to sue. This last proposition, to wit, to give a mortgage on his real estate, your orator, John H. Haughton, did not feel, at liberty to accede to; because, owing other debts, it might have caused proceedings of bankrupt'y against him, that would have seriously injured him and greatly prejudiced the defendant. Your orators further state that in a few weeks after the receipt of the last letter here referred to, the defendant commenced suit in this court against your orators, and the executors of the late Peter G. Evans, but in consequence of the process not having been executed on all the parties defendant, alias writs were issued, until finally, according to the recollection of your orators, the case stood first for trial at the last or November term, 1869, of this court. Your orator John H. Haughton further states that at the first week of this court he was, as an attorney, attending to his professional business at Carteret superior court; that being
5 very much indisposed, he returned to his home in Newberne before the term of the circuit court expired; that still continuing unwell, and not feeling well enough to attend this court, he addressed a letter to his counsel, Hon'l. Sam. F. Phillips, and requested him, if possible, to have the case continued; that he had some important evidence that he desired to introduce on the trial, and *and* that it would do him great injustice, should he not be permitted to use such evidence; and further requested Mr. Phillips if there was any probability of the case being taken up, or if taken, to get it continued until your orator, John H. Haughton, could reach court, provided he was well enough to do so.* Your orator, John H., further states that he is informed by Mr. Phillips, and therefore charges the fact so to be, that when the case was regularly reached and was first called, the counsel for the defendant (being in that case the plaintiff) were *with* about, and in consequence thereof the case was, by order of the court or by court, put to the end of the docket.* The evidence for the defence of said suit being exclusive in possession of said J. H. Haughton, he being alone the party who conducted the correspondence with the defendant, and with whom, as he states. all the arrangements and agreements were exclusively made, without any action on the part of L. J. Haughton or knowledge
6 of the same at the time. Your orator, John H., is also further informed by Mr. Phillips, and therefore alleges the fact so to be, that after the defendant's attorneys, Mess. Hubbard & Green appeared in court, that a motion was made and earnestly pressed by them to take up the case out of its regular order, or *in* otherwise before it had been reached at the end of the docket; that said motion was resisted by the said counsel of your orators, upon the ground, among other things, besides not being law regularly reached, that your orator, John H., had informed him by letter that he had evidence, by him deemed important, that he desired to offer on the trial, and his counsel insisted that the then defendants should have an opportunity to produce such evidence, and therefore insisted that the case should stand continued for the term, which, according to the recollection of your orator, John H. Haughton, Mr. Phillips informed him was accordingly ordered;

that on the next Monday, when the court met, and when at the very last day of the term, the case was called up, and a trial pressed by the defendant's (then plaintiff) counsel, & resisted by your orators' attorney upon the ground that his cli*ant* was absent, did not expect a trial, & had no time then to notify him; that the court assented
7 to the motion of the attorneys, Mess. Hubbard and Gree*m*, and ordered the case to be tried; and, without the knowledge, and in utter ignorance of your orators, and under circumstances that induced them to believe a trial would not take place at that time, a judgment was taken on said notes for principal and interest, amounting, as your orators believe, to $7,500, or thereabouts, which was taken against your orators, a non-suit having been taken as to the executors of P. G. Evans, in which judge*m*ent, against your orators, your orator, John H., is the principal debtor, and your orator, Lawrence J. Haughton, is sur*i*ty. Your orator, John H., believes and insists that he had in his possession evidence, which, if allowed to be received, would have shown an obligation on the part of the defendants not to have instituted the said suit for the whole debt in one action; that there had been a new and substituted contract between the said defendant and your orator, J. H. Haughton, which was equally binding on both—he to pay the said debt by installments, and she, def't, to receive them; that said judg't was taken under such circumstances that your orator could not possibly expect to attend the trial, and when his counsel had every reason to suppose the case, having
8 been put to the foot of the docket, would not be reached during that term, and this impression and belief was shown to have been well founded, as the foot of the docket was not reached, as your orators are informed, during the remainder of the term. And your orators further show that, after said trial was ordered, there was no possible opportunity for them, or either of them to be present at the trial, and they have thereby been prevented from introducing evidence that they believe would have been all-important to their defence, and which ought & as they believe should have caused a verdict in favor of your orators rather than against them. Your orator, John H., has cause to believe that reasons were offered to the court for taking up said case, & among others, that thereby no harm could come to your orators; but that the then plaintiff, being sure of the debt after judge*m*ent, would be leni*a*nt and indulgent to your orators. Whether this is or , one thing is evident, that the defendant shows the very opposite of a spirit of indulgence and forbearance, now that she has obtained judge*m*ent, for as soon as your orator, J. H. Haughton, learned, to his very great surprise, that judgment had been rendered against him and his sur*i*ty, his co-plaintiff, her & co-defendant in that suit, addressed a letter to the defendant stating that, as she now had a judge*m*ent, he wished to
9 know whether she would not receive part of the money in a short time, and grant an indulgence for the balance; that he was making a most strene*o*us effort to raise the money to pay her; was negotiating for the sale of some valuable real property, and that all he wanted was a little time to raise the money, and asked her what she would do, as he much preferred to pay said debt as soon as possible, and desired, if any reasonable adjustment could be made, to avoid the necessity of resorting to an injunction. In some three or four weeks, and after he had written a second letter to the defendant, she replied to your orators' (John H.'s) letter, that she would grant no indulgence at all; at which your orator is now suprised, because he has in his possession a letter written by the defendant, in which she says, after she

gets a judgement against your orators, and there is a levy to make the debt safe, she will indulge, and will then be willing to take $1,000 or $1,500 during the present fall, and give indulgence for the residue; which letter bears date 30th April, 1869. Your orators further show that the defendant, immediately after the close of the last term of this court, caused execution to be issued, and the property of both your orators *have* been levied on, and the defendant, through her agent in
10 fact, is pressing a sale, and the collection of the money as fast as possible; which, if done, will cause a ruinous sacrafice of property to your orators, in violation of the spirit and legal operation of her agreement, as they claim and insist; and they further insist that, as they verily believe, had they had an opportunity to introduce, on the aforesaid trial, they could have shown a good, legal, and valid defence to said action. All which actings, &c., are contrary to equity; and as your orators, are remediless in the premises, save in this hon'l court, your orators pray your hon. to grant them a new trial in said suit, so that they may be allowed to introduce evidence verily & truly believed to be important for this defence, and in the mean time, may it please your hon. to grant them a writ of subpœna & injunction preventing and restraining the collection of the money claimed on said judgement, and to prevent any sale of the property of your orators in the mean time, under the aforesaid execution, now in the hands of the marshall for the district and circuit aforesaid, and may it please your honor to grant to your orators such other and further *& other* relief as to your honors shall seem meet, and as their case may require.

M. E. MANLEY,
Plain. Atto.

11 UNITED STATES OF AMERICA,
District of North Carolina, 5th Circuit.

John H. Haughton makes oath that the facts set forth in the foregoing bill, as of his own knowledge, are true, and those stated as matters of belief, he believes to be true.

J. H. HAUGHTON.

Sworn and subscribed before me, this 5th day of March, A. D. 1870.
[SEAL.] CHA'S HIBBARD,
Clerk Pamlico U. S. Dist. Court.

12 And upon the filing of the said bill, and in obedience to the fiat of the Honorable George W. Brooks, one of the judges of said court, (an injunction bond having been filed and approved by the clerk of said court as directed by the said fiat,) writs of subpœna and injunction were issued in the words and figures following, to wit:

13 *Subpœna.*

UNITED STATES OF AMERICA,
District of North Carolina, ss:

The United States of America to Anna E. Smallwood, of New York, her counsellors, attorneys, solicitors, and agents, Messrs. Hubbard and Green, Craven County, N. C.:

We command you and every one of you that you appear before the judges of our circuit court of the United States of America for the district of North Carolina, at the office of the clerk of the said court, in

the city of Raleigh, in said district, on the first Monday in the month of May next, to answer the bill of complaint of John H. Haughton and Lawrence J. Haughton, of the State of North Carolina, filed in the clerk's office of said court, in said city of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of North Carolina, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1869, and in the ninety-found year of the independence of the United States.

Issued the 4th day of April, 1870.

[L. S.] N. J. RIDDICK, *Clerk.*

14 MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office of said circuit court, at Raleigh aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

(Indorsed:) United States circuit court, district of North Carolina. John H. Haughton & Lawrence J. Haughton v. Anna E. Smallwood. Equity subpœna. Returnable the first Monday in May, 1870. N. J. Riddick, clerk.

Executed according to law by leaving copy with the defendant att'ys, Hubbard & Green, this the 8th day of April, 1870.

(Signed) SAMUEL T. CANOW,
U. S. Marshal,
By S. BLAGGE,
U. S. Dep'ty Marshal.

15 *Writ of injunction.*

UNITED STATES OF AMERICA,
District of North Carolina:

To Anna E. Smallwood, her counsellors, attorneys, solicitors, and agents:

Whereas John H. Haughton and Lawrence J. Haughton have filed their bill in equity in the circuit court of the United States for the district of North Carolina against you, the said Anna E. Smallwood, and it was thereupon ordered by the judge that an injunction should be issued against you and the other persons aforesaid, commanding you and them to desist from the collection of the amount of a judgment rendered at the last term of said court, held in the city of Raleigh on the last Monday in November, 1869, in favor of said Anna E. Smallwood against the said John H. Haughton, and Lawrence J. Haughton;

And also to Samuel T. Canow, United States marshal for the said district of North Carolina, and all the deputies of said marshal:

We do strictly enjoin and command you and all the other persons aforesaid to desist from the collection of the amount of the said judgment, to wit, the sum of seven thousand five hundred and four $\frac{42}{100}$ dol-
16 lars, as principal money, with interest from the 29th Nov., 1869, and damages in the sum of two hundred and sixty-two $\frac{65}{100}$ dol-

lars, and also fifty-nine $\frac{87}{100}$ dollars for costs of suit; upon which judgment, and for the whole of the amount included therein, an execution has been issued to you, returnable to June term of our said court, 1870.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1869, and in the ninety-fourth year of the independence of the United States.

Issued the 4th day of April, 1870.

[L. S.] (Signed) N. J. RIDDICK, *Clerk.*

And upon which writ of injunction the said marshal makes his return in the following words and figures, to wit:

"Executed according to law by leaving copy with the defendant att'ys, Hubbard & Green, this the 8th day of April, 1870.

(Signed) "SAM'L T. CANOW,
"*U. S. Marshal,*
"By S. BLAGGE,
"*U. S. Dist. Marshal.*"

17 And thereupon the defendant, by her attorneys, Hubbard & Green, filed her answer to the said bill of complaint in the following words and figures, to wit:

18 UNITED STATES OF AMERICA,
North Carolina District,
Circuit Court 4th Circuit:

The answer of Annie E. Smallwood, guardian of Charles Allen, defendant, to the bill of complaint of John Haughton & Lawrence J. Haughton, complainants.

This defendant, reserving to herself all right of exception to the said bill of complaint, for answer thereto saith that it is true, as charged in the bill of complaint, that the complainants, John H. Haughton & Lawrence J. Haughton and Peter G. Evans, made their note for the sum of five thousand two hundred and seventy-five dollars, dated on the 16th day of December, 1860, payable to this defendant one day after date.

Further answering, this defendant says that it is true that the complainant John Haughton, did, in January, 1868, make a propisition to pay off said notes by installments, but that in that part of the bill of complaint which purports to set forth said proposition, he has suppressed a material and important part thereof, which was that he would pay her five hundred dollars in one or two months from the date of his letter containing the proposition, which was the 8th day of Jan-

19 uary, 1868; that the proposition in said letter is as follows: "In one or two months I will pay you five hundred dollars on the note you hold as guardian of Charles Allen, & all or as much of the small note due you individually as possible; in twelve months, I will pay you $500 more on the guardian note, and in the course of next year will pay you all the interest then due, and will then pay you regularly twice a year, if you prefer it, the interest as it accrues, and part of the principal also, if required, but as by law you could not ordinarily use the principal, and as I suppose you would not do so, I presume that regular payments of interest would be all that is required for the present;" and that this was the only propisition made to her by the complainant, John H. Haughton, in relation to said note in January, 1868.

This defendant, further answering, admits that she did. in reply to the letter containing said propisition, on the 13th day of January, 1868, or thereabouts, say that she assented to the arrangement proposed in the complainant John H. Haughton's letter to her of the 8th January, 1868, as she did not like to be unreasonable at such a time as that, and added that if the arrangement proposed was punctually carried
20 out on the part of the complainant, John H. Haughton, she would not find it necessary to call on him for the principal for some time, or words to that effect.

Further answering, this defendant says that, notwithstanding the complainant John H. Haughton's propersition to pay her five hundred dollars in one or two months from the 8th day of January, 1868, he did not pay or offer to pay her five hundred dollars in one or two months from that date, and made no offer to pay her the said five hundred dollars until the 20th day of April, 1868, when he wrote to defendant to let him know to whom he should pay the said five hundred dollars on the note due her as guardian of Chas. Allen, the date of said last-nam'd letter being dated more than three months after the date of his letter of the 8th January, 1868, above mentioned. To the said letter of the complainant John H. Haughton, of date of the 20th of April, 1868, this defendant admits she did reply that she declined to receive the said sum of five hundred dollars, because he had not fulfilled his promise as to time, and that had he done so, she probably would have taken no further steps, and that shed did then make to him an entirely new and different proposition, to wit, that he, the complainant John H.
21 Haughton, should pay *should pay* five hundred dollars then, $1,000 in November, 1868, and give a mortgage to secure the balance of said debt in a manner entirely satisfactory to her lawyer, and that she would then let the debt remain, to be settled in the payments he proposed, and she admits that she intimated, or threatened, that if this was not done she would sue him. To this last-named propisition of this defendant, the complainant John H. Haughton refused to accede, and on the 30th day of April, 1868, wrote to this defendant as follows, to wit: "I will make you one more proposition: I will pay you five hundred dollars as soon as I hear from you, assenting to it, and one thousand dollars by the 20th of November, and all the balance of the interest within six months, or thereafter, say by the 1st of April next, and then will pay you the interest semi-annually, and one-fourth of the principal annually until paid, and I will enter into an agreement with your lawyer, Mr. Hubbard, that the moment I fail to meet these payments, he may take judgement for all that is due. This is the best I can do; you can't, if you sue, get any money sooner than about one year from this time, whereas by accepting my propisition you will get five hundred dollars cash, at once, and one thousand dollars
22 more in the fall. If this priposition will not answer, I have none other to make, and must prepare to be ready, if possible, to prevent any sacrafice of property by being forced *unnessarially* to pay so large a sum at one time."

This defendant, further answering, says that, tired of the fruit'ess correspondence with the complainant John H. Haughton, and apprehensive from the language of his last-mentioned letter that he intended to attempt to put his property out of the reach of his creditors, and impelled by a sense of duty to her ward, she commenced suit in this court, to the June term, 1868, thereof; and she admits that the said suit stood first for trial at the last or November term, 1869, of this court.

This defendant, further answering, says that she does not know

whether said complainant John H. Haughton was prevented from attending the November term, 1869, of this court, by professional business, or by being unwell, nor does she have any knowledge or information, save that furnished by the bill of complaint, of any correspondence between him and his counsel at Raleigh relative to said suit, but that she is informed and believes that a nolle prosequi was entered in said suit as to the executions of Peter G. Evans, and a verdict and judgment was rendered in favor of this defendant against the complainants,
John H. Haughton and Lawrence J. Haughton, according to the
23 course of the court at the last term thereof.

This defendant, further answering, says that she never had any agreement with the complainant , or either of them, or with their counsel, that if they, or either of them, would allow her to obtain a judgment against them in said suit that she would grant any indulgence in the collection of the same; and that never authorized her attorney, or either of them, to make any such agreement or understanding with the complainants or their counsel; and she is informed by her attorneys in said suit, and believes that neither they, nor either of them, ever had any such agreement or understanding with the complainants, or either of them, or with their counsel. On the contrary, she is informed by her counsel in said suit, and believes that the complainants who were the defendants in said suit, strenuously opposed her obtaining a judgment against them in said suit.

This defendant, further answering, says that she is informed by her counsel & believes that there was no order of the court at its last term that said suit should be continued for the term.

This defendant, further answering, denies that the complainant John H. Haughton had, when said suit was tried, or has ever had in his possession, any evidence which would have prevented a recovery
24 by this defendant in said suit for the full amount, or the principal and interest of said note; and that she is informed by her attorneys, & beli'ves that no reasons were offered to the court for taking up said case, to the effect that thereby no harm could come to the complainants; and that this defendant would be leniant and indulgent to complainants after judgment.

This defendant, further answering, says that the said cause, she is informed by her counsel and believes, was regularly reached on the docket, and was not taken up out of its order.

This defendant insists that the injunction granted in this cause ought to be di'solved, and prays to be hence dismissed with her reasonable costs & charges in this behalf most wrongfully sustained.

GREEN & HUBBARD,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
District of North Carolina:

Anna E. Smallwood, the defendant in the above suit, maketh oath that the facts set forth in the foregoing answer as of her own knowledge true, and those otherwise set forth she believes to be true.
25 ANNA E. SMALLWOOD.

Sworn to and subscribed before me this 29th day of April A. D. 1870.
[SEAL.] CHA'S HIBBARD,
Clerk Pamlico U. S. Dist. Court.

26 And afterwards, to wit, on the 30th day of April, 1870, this cause being heard, a decree was filed in the following words and figures, to wit:

27 UNITED STATES OF AMERICA,
District of North Carolina:

In the circuit court of the United States in and for the said district of North Carolina.

JOHN H. HAUGHTON & LAWRENCE J. HAUGHTON
vs.
ANNA E. SMALLWOOD, GUARDIAN OF CHARLES Allen.

This case coming on to be heard in pursuance of previous notice, on a motion to dissolve the injunction heretofore granted before me, George W. Brooks, one of the judges of the said court, at chambers, in the city of Newberne, in said district, on the 30th day of April, A. D. 1870, and the same having been debated by counsel, and duly considered by the court, it is adjudged and decreed that the said injunction be, and the same is hereby, dissolved; from which order and decree the complainants pray an appeal to the Supreme Court of the United States, which is granted, upon their entering into bond in the penal sum of five hundred dollars, with the conditions required by law, with surety or
28 sureties, to be approved by the clerk of the circuit court aforesaid.

(Signed) G. W. BROOKS,
Dist. Judge.

And on the 6th day of May, 1870, an appeal bond was approved and filed; which bond is in the *wods* and figures following, to wit:

Know all men by these presents that we, John H. Haughton, Lawrence J. Haughton, and William Fog, are held and firmly bound unto Anna E. Smallwood in the penal sum of five hundred dollars, ($500 00) to be paid to the said Anna E. Smallwood, her executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 5th day of May, 1870.

Whereas the above-named J. H. Haughton and L. J. Haughton have prayed for and obtained an appeal from a decree of the judge of
29 said court, dissolving an injunction in a suit in equity, wherein the said J. H. Haughton and L. J. Haughton are plaintiffs, and Anna E. Smallwood, guardian, is defendant, to the Supreme Court of the United States of America:

Now, therefore, the condition of this obligation is such, that if the above-named John H. Haughton and Lawrence J. Haughton shall prosecute the said appeal to effect, and answer all costs if they shall fail to make good their suit or plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) JOHN H. HAUGHTON. [SEAL.]
LAWRENCE J. HAUGHTON. [SEAL.]
WILLIAM FOG, *Surety.* [SEAL.]

NORTH CAROLINA, *Craven County:*

John H. Haughton, Lawrence J. Haughton, and William Fog, being each severally and duly sworn according to law, each severally says that he is a resident and freeholder within this State, and is
30 worth more than five hundred dollars ($500 00) over and above all his debts and liabilities, and exclusive of property, by law exempt from execution.

(Signed) JOHN J, HAUGHTON.
LAWRENCE J. HAUGHTON.
WILLIAM FOG, *Surety.*

Sworn and subscribed before me this May 5th, 1870.
J. E. WEST, *Clerk S. C.*

NORTH CAROLINA, *Craven County:*

I certify that on this 5th day of May, 1870, John H. Haughton, Lawrence J. Haughton, and William Fog, above named, to me known to be the persons described in and who executed the above bond, personally appeared before me and severally acknowledged that they executed the above undertaking as their own free act, for the uses and purposes therein mentioned.

[L. S.] (Signed) J. E. WEST, *Clerk S. C.*

31 I, N. J. Riddick, clerk of the circuit court of the United States of America in and for the district of North Carolina, do hereby certify that the foregoing is a true copy of the original papers on file in my office in the above-entitled cause, and of the proceedings in the same.

In testimony whereof I hereunto set my hand and affix the seal of said court at the city of Raleigh, in said district, this 3d day of November, A. D. 1870, and in the 95th year of the independence of the United States of America.

[SEAL.] N. J. RIDDICK, *Clerk.*

(Indorsement on cover:) No. 345. John H. Haughton and Lawrence J. Haughton, appellants, vs. Anna E. Smallwood. N. Carolina C. C. U. S. Filed 7th December, 1870.